

TITLE 103
LEGISLATIVE RULE
STATE FIRE MARSHAL

SERIES 1
CERTIFICATION OF ELECTRICAL INSPECTORS

§ 103-1-1. General.

1.1. Scope. -- This rule establishes the procedures to be followed to protect the health, safety and welfare of the public as well as public and private property by assuring the competence of those who perform electrical inspections of dwellings and other structures through certification by the state fire marshal.

1.2. Authority. -- W. Va. Code § 29-3C-4

1.3. Filing Date. - March 29, 2004

1.4. Effective Date. - April 1, 2004

§ 103-1-2. Definitions.

2.1. "Master electrician" - Means a person who holds a valid Master's Electrician License issued by the state fire marshal and as defined in W. Va. Code §29-3B-2.

2.2. "Electrical work" - Means the installation of wires, conduits, apparatus, fixtures, other appliances, equipment or systems for transmitting, carrying, controlling or using electricity as defined in the scope of the national electrical code.

2.3. "License" - Means a valid and current electrician's license issued by the state fire marshal.

2.4. "Electrical contractor" - Means a person, firm or corporation who engages in the business of electrical work or employs master electricians, journeyman electricians, apprentice electricians or other workers for the construction, alteration or repair of any electrical system as defined in the scope of the national electrical code.

2.5. "Design" - Means to plan or layout electrical systems in sketches or drawings for use by licensed electricians. It includes, but is not limited to, determining the service

components of electrical systems, the type and sizes of conductors, circuit breakers and other components of electrical systems necessary to accommodate the demand load.

2.6. "National Electrical Code" - Means the National Electrical Code for licensing of electricians promulgated by the National Fire Protection Association. Copies of the National Electrical Code may be obtained contacting: The National Fire Protection Association, Batterymarch Park, Quincy, MA 02269. 1-800-344-3555.

2.7. "State Fire Marshal" - Means the West Virginia State Fire Marshal and his or her designated representatives.

2.10. "State fire commission" - Means the state agency composed of the appointed state fire commissioners and the office of the state fire marshal.

§ 103-1-3. Classification of Electrical Inspectors.

3.1. Electrical inspectors may be certified in the following three (3) classifications:

3.1.1 - "Class A Electrical Inspector Certification" - This classification authorizes the electrical inspector to perform electrical inspections on one and two family dwellings only;

3.1.2. - "Class B Electrical Inspector Certification" - This classification authorizes the electrical inspector to perform electrical inspections on all structures including but not limited to, one and two family dwellings; and

3.1.3. - "Class C Electrical Inspector Certification" - This classification authorizes the electrical inspector to perform electrical plan reviews and perform electrical inspections on all structures including but not limited to, one and two family dwellings.

§ 103-1-4. Qualifications for Certification.

4.1. An applicant for an "Electrical Inspector's Certification" shall possess a valid and current Master's Electrician License issued by the state fire marshal. An applicant shall also provide proof that he or she passed the respective tests offered by the National Certification Program for Construction Code Inspectors and administered by Experior, Inc. 2100 NW 53rd Avenue, Gainesville, FL 32653, or its equivalent as determined by the state fire marshal.

4.1.1. For a "Class A Electrical Inspector Certification", in addition to the electrical licensure requirement, an applicant shall provide proof that he or she passed "Test 2A Electrical One and Two Family Dwelling" of the National Certification Program for Construction Code Inspectors, or its equivalent as determined by the state fire marshal.

4.1.2 For a "Class B Electrical Inspector Certification", in addition to the electrical licensure requirement, an applicant shall provide proof that he or she passed "Test 2A Electrical One and Two Family Dwelling" and "Test 2B Electrical General" of the National Certification Program for Construction Code Inspectors, or its equivalent as determined by the state fire marshal.

4.1.3 For a "Class C Electrical Inspector Certification", in addition to the electrical licensure requirement, an applicant shall provide proof that he or she passed "Test 2C Electrical Plan Review", "Test 2A Electrical One and Two Family Dwelling" and "Test 2B Electrical General" of the National Certification Program for Construction Code Inspectors, or its equivalent as determined by the state fire marshal.

§ 103-1-5. Procedure for application.

5.1. Form of Request - Each applicant requesting an electrical inspector's certification under the provisions of this rule shall, as a condition precedent to the issuance of certification, provide the state fire marshal with:

5.1.1. A completed application on forms furnished by the state fire marshal;

5.1.2. Proof of professional liability insurance (errors and omissions) in the amount of not less than two hundred and fifty thousand (\$250,000.00) dollars. Proof of renewal shall be forwarded to the state fire marshal's office prior to the expiration date of the policy and shall cover at a minimum the period for which the Electrical Certification is issued;

5.1.3 A copy of a valid West Virginia business license as issued by the West Virginia Department of tax and Revenue; and

5.1.4. Any other documentation that the state fire marshal may require to ensure compliance with qualifications for certification.

5.2. The state fire marshal shall deny a certificate to any person who fails to meet the required minimum qualifications and he or she shall also forfeit his or her application fee. Any applicant who attains the minimum requirements at a latter date shall submit to the state fire marshal a new application for certification.

5.3. After review of an application and approval by the state fire marshal and receipt of the certification fee, the state fire marshal shall issue the individual electrical inspector's certification.

§ 103-1-6. Expiration and Renewal

6.1. Expiration - All electrical inspectors' certifications issued by the state fire marshal expire on the last day of the anniversary month (twelve months) from the date of issuance of the certification. (i.e., license issued on August 15, 2003 will expire on August 30, 2004 and on August 30th each successive year).

6.2. Renewal Fee Required - Any certified electrical inspector, in good standing, may renew his or her certificate prior to the expiration date by submitting the authorized renewal certification fee to the state fire marshal. It is the individual electrical inspector's responsibility to submit his or her certification renewal to the state fire marshal prior to the expiration date.

6.3. Renewal After Expiration - A certified electrical inspector who has not renewed his or her certificate in accordance with the provisions of this rule shall submit a new application to the state fire marshal. A person may not perform electrical inspection work during the period of time his or her certification is expired. A person failing to renew his or her certification shall reapply for the electrical inspector's certification for which he or she qualifies in accordance with this rule.

6.4. As a condition of renewing any electrical inspector's certificate, the state fire marshal shall require proof of completion of three (3) Continuing Education Units as defined by the West Virginia Department of Education, or its equivalent, every three years. Upon receipt of the required documentation, the state fire marshal shall issue the certification.

6.5. National and state organizations acceptable to offer the required continuing education requirements include but are not limited to the following organizations or their chapters: The International Association of Electrical Inspectors (IAEI); The

National Fire Protection Association (NFPA); The National Electrical Contractor's Association (NECA); Building Officials and Code Administration (BOCA); and any other recognized organization or party that the state fire marshal deems appropriate.

§ 103-1-7. Fees.

7.1. Certification fee - Fifty (\$50.00) dollar fee per certification.

7.2. Renewal fee - One hundred (\$100.00) dollar fee per certification annually.

7.3. Application fee - Twenty-five (\$25.00) dollar fee per application submitted.

7.4. Duplicate certification fee - A person who has lost or had his or her electrical inspector's certification destroyed, may submit a duplicate application fee of ten (\$10.00) dollars payable to the state fire marshal and a notarized statement stating that the certification was lost or destroyed.

§ 103-1-8. Effect of Noncompliance; Failure to obtain certification; Penalty.

8.1. Each day during which a person performs electrical inspections without the required certification or while in non-compliance with any of the provisions of W. Va. Code §29-3C-1 et seq., after official notice that the work is unlawful, is a separate violation of this rule.

§ 103-1-9. Disposition of Complaints.

9.1. Enforcement of Certification Requirements - In the course of investigating complaints as authorized under West Virginia Code, the state fire marshal shall determine whether or not the person against whom the complaint has been filed is certified.

9.2. Any citizen, law enforcement official or other official of any state, county, or municipal government agency, upon observing an infraction of the certification requirements of W. Va. Code §29-3C-1 et seq. may file a written complaint with the office of the state fire marshal. The state fire marshal may provide a form for this purpose, but a complaint may be filed in any written form. When a complaint is filed with the office of the state fire marshal, that office shall investigate the complaint. In addition to describing the alleged violation which prompted the

complaint, the complaint should contain as a minimum the following information:

9.2.1 The name and address of the certified electrical inspector or applicant against whom the complaint is lodged;

9.2.2 The date of the alleged unlawful act;

9.2.3 The nature of the alleged unlawful act; and

9.2.4 The location of the alleged unlawful act or occurrence.

9.3. A copy of the complaint sent to the certificate holders or applicants shall be considered properly served when sent to their last known address. It is the responsibility of the certificate holder or applicant to keep the state fire marshal informed of his or her current address. The certificate holder or applicant has 30 days to file a response or appeal petition to the complaint with the state fire marshal's office.

9.4. After receipt and review of a complaint, the state fire marshal shall cause to be conducted any reasonable inquiry or investigation he or she considers necessary to determine the truth and validity of the allegations set forth in the complaint.

§ 103-1-10. Orders and Decisions of the State Fire Marshal; Appeals and Procedures for Appeals from such Orders or Decisions.

10.1. State Fire Marshal's Order and Decisions are final and Conclusive - Any order or final written decision of the state fire marshal based upon or made in the course of the administration or enforcement of the provisions of W.Va. Code 29-3C-1 et seq. based upon or made pursuant to this rule, is final, unless vacated or modified upon review pursuant to the appeal rights and procedures provided by Chapter 29A of the W.Va. Code and this rule.

10.2. State Fire Marshal's Order and Decisions Appealed - Any person aggrieved by an order or final written decision of the state fire marshal based upon or made in the course of the administration or enforcement of the provisions of W.Va. Code 29-3C-1 et seq. or made pursuant to this rule, and who desires to contest the order or written decision may file an appeal from the order or written decision with the state fire commission. Preservation of the right to an appeal and the procedure for the contested case is governed by this section and by W.Va. Code 29-3C-1 et seq.

10.3. Appeal Petition - The appeal petition shall be typewritten, styled "Appeal Petition", and the appellant shall submit an

original and one (1) copy. It shall be complete in itself so as to fully state the matters contested. No facsimile, telephone call, or similar communication may be regarded as an appeal petition. The petition shall contain and include the following:

10.3.1. A copy of the order or decision of the state fire marshal being contested;

10.3.2. A clear and concise assignment of each error which the petitioner alleges to have been committed by the state fire marshal in issuing the order or decision with each assignment of error being shown in separately numbered paragraphs;

10.3.3. A clear and concise statement of the facts upon which the petitioner relies as sustaining his or her assignment of errors;

10.3.4. The address to which the petitioner desires to have all notices, documents, and the final order of the fire commission mailed;

10.3.5. The telephone number or numbers where the petitioner can be contacted;

10.3.6. The names and addresses of all persons having any ownership interest in the property which is the subject of the state fire marshal's order being contested;

10.3.7. A prayer setting forth the relief sought; and

10.3.8. The signature of the petitioner.

10.4. Time Requirement and Manner of Filing Appeal Petition - The petitioner shall submit an appeal petition by personal delivery or mail to the state fire commission within thirty (30) days following service upon the petitioner, or within thirty (30) days following actual receipt if service is not required or for some reason is not made of the order or decision being contested. Any appeal petition shall be sent by certified mail, return receipt requested, and is timely if postmarked within the thirty (30) day period. In the event the appeal petition is not timely filed with the state fire commission, the order or decision of the state fire marshal being contested is final.

10.5. Copy of Appeal Petition to State Fire Commission - Upon receipt of an appeal petition, the Chairman of the State Fire Commission, through office staff, shall supply a copy of the petition to the State Fire Commission members together with an opinion by the State Fire Marshal regarding the urgency of the matter being contested. If the State Fire Marshal elects to file a response to the appeal petition, he or she shall deliver a copy of the response to the State Fire Commission and a copy to the

petitioner.

10.6. Scheduling Appeal Petition for and Notice of Hearing - The State Fire Commission Chairman through office staff shall schedule a hearing on the appeal petition giving the petitioner and the State Fire Marshal at least ten (10) days written notice of the date, time, and place of the hearing. The notice to the petitioner shall be by personal delivery or by certified mail, return receipt requested, and shall contain a short and plain statement of the matters to be considered at the hearing, and a copy of the State Fire Marshal's response, if any, to the appeal petition. The notice of hearing shall be mailed or personally delivered by the State Fire Marshal no later than thirty (30) days after receipt of the appeal petition. A copy of the notice to the petitioner shall be supplied to the State Fire Marshal. The hearing shall be conducted at a designated location in Charleston, West Virginia, or in the discretion of the State Fire Commission at a location within the county of residence of the petitioner.

10.7. Authorized Representative - The petitioner may appear individually, or by counsel.

10.8. Continuances - A motion for continuance may not be granted by the State Fire Commission unless made in writing three (3) days before the hearing or during the hearing, in either case for good and sufficient cause. Upon consideration of a motion for continuance, the urgency of the situation shall be determined and taken into consideration. Conflicting engagements of counsel or the employment of a new counsel are not good grounds for a continuance unless a motion is filed promptly after a notice of hearing has been mailed or unless extenuating circumstances are shown, which the State Fire Commission or hearing examiner considers adequate.

10.9. Absence of Petitioner or Counsel at the Scheduled Hearing - A hearing by the Fire Commission shall not be delayed or continued due to the absence of the petitioner or his or her legal counsel at a hearing, after service of notice of the time, date, and place of the hearing. The hearing shall proceed and the case shall be submitted for decision on the part of the absent petitioner or petitioners.

10.10. Hearing Examiner - Any member of the State Fire Commission may conduct a hearing on an appeal petition and has full authority to conduct the proceedings on an appeal petition, and when acting in that capacity shall be referred to as the hearing examiner. Alternatively, the State Fire Commission may authorize and empower an impartial attorney as a hearing examiner with the specific powers listed in W.Va. Code 29A-5-1(d).

10.11. Subpoenas and Subpoenas Duces Tecum.

10.11.1. At any hearing held under this section, the State Fire Marshal may require, through the use of subpoenas and subpoena duces tecum, the testimony of witnesses and the production of documentary evidence may be required. The State Fire marshal may issue subpoenas and subpoena duces tecum at the request of the petitioner, the hearing examiner or the State Fire Commission.

10.11.2. Every subpoena or subpoena duces tecum shall prove service at least five (5) days before the return date of that subpoena, either by personal service made by any person eighteen (18) years of age, or older, or by registered or certified mail. A return acknowledgement signed by the person to whom the subpoena or subpoena duces tecum is directed is required to prove service by registered or certified mail.

10.11.3 Any party requesting a subpoena or subpoena duces tecum shall see that it is properly served. Service of a subpoena or subpoena duces tecum issued at the insistence of the State Fire Commission is the responsibility of the State Fire Commission.

10.11.4. Any public official who serves any subpoena or subpoena duces tecum is entitled to the same fee as a Sheriff who serves a witness subpoena for a circuit court of this state; and fees for the attendance and travel of witness are the same as for witnesses before the circuit courts of this state. All fees shall be paid by the State Fire Commission if the subpoena or subpoena duces tecum is issued at the instance of the Fire Commission. All fees related to any subpoena or subpoena duces tecum issued at the instance of the petitioner or the State Fire Marshal shall be paid by the party requesting the subpoena or subpoena duces tecum.

10.11.5. A request for a subpoena or subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay the required fee.

10.11.6. Any person receiving a subpoena or subpoena duces tecum issued under this section shall honor the subpoena or subpoena duces tecum as though it were issued by a circuit court of the state, and shall appear as a witness and/or produce the books, records, or papers in response to the subpoena or subpoena duces tecum. In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person or the refusal of any witness to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held, upon application by the State Fire Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from the circuit court or a refusal to testify in the circuit court.

10.12. Evidence.

10.12.1. All witnesses appearing at the hearing shall testify under oath or affirmation. Every adverse party has the right of cross-examination of witnesses who testify, and has the right to submit rebuttal evidence.

10.12.2. Either party may offer all relevant and material evidence, including papers, records, agency staff memoranda and documents in the possession of the State Fire Commission or the State Fire Marshal to be made part of the record in the case.

10.12.3. Except as otherwise in this section, the Hearing Examiner shall follow the rules of evidence as applied in civil cases in the circuit courts of this state in considering the admissibility of evidence. However, when necessary to ascertain certain facts not reasonably susceptible of proof under those rules, the Hearing Examiner may admit reasonably authenticated evidence, except where precluded by the Code or privilege, if it is of a type commonly relied upon by a reasonable prudent person in the conduct of his or her affairs.

10.13. Record of Proceedings - All of the testimony, evidence and rulings on admissibility of evidence at any hearing shall be recorded by a certified court reporter. An official record of the hearing shall be prepared by the State Fire Commission. A transcript, shall only be prepared if the Commission's final decision is appealed. The cost of the transcript shall be paid by the party requesting it.

10.14. Informal Disposition - At any stage of the proceedings, either party may dispose any contested case by stipulation, agreed settlement, consent order or default.

10.15. Decision by the State Fire Commission - Upon the conclusion of the hearing, the person designated by the State Fire Commission as hearing examiner shall prepare a decision supported by findings of fact and conclusions of law affirming, modifying, or vacating the earlier order or decision of the State Fire Marshal. The State Fire Commission may accept, modify, or reject the hearing examiner's decision. If the Commission accepts the hearing examiner's decision it shall sign the decision. If the Commission rejects or modifies the hearing examiner's decision, it shall prepare a written order setting forth findings of facts and conclusions of law. In either event, the order signed by the State Fire Commission shall be final unless vacated or modified upon judicial review of the order. The State Fire Commission shall serve a copy of the order on all parties to the hearing and

all attorneys of record, if any, in person or by certified mail, return receipt requested.

10.16. Judicial Review - The petitioner or the State Fire Marshal may appeal the decision to the circuit court of the county of residence of the petitioner, if the appeal is filed within thirty (30) days after the date upon which the party was served a copy of the final order or decision of the State Fire Commission. The final order signed by the State Fire Commission is final if the proceedings for judicial review are not instituted within the thirty (30) day period.

§ 103-1-11. Responsibilities of the Electrical Inspector.

11.1. Any certified electrical inspector, who has knowledge of violations of any rule of the state fire marshal or any rule of the state fire commission or of the W. Va. Code, shall submit the information, together with available evidence to the state fire marshal.

11.2. A certified electrical inspector shall submit a written report of any findings of his or her electrical inspection to the property owner and other appropriate parties. In addition, the electrical inspector shall include the name and electrician license number of the individuals performing the electrical work.

11.3. A certified electrical inspector shall submit an annual report to the state fire marshal indicating the number, type and locations of electrical inspections performed during the proceeding year. This annual report shall be filed with the state fire marshal no later than the thirty-first day of January of the following year.

11.4. A certified electrical inspector shall submit annually to the state fire marshal a copy of his or her schedule.

11.5. A certified electrical inspector shall comply with all federal, state and local laws, rules and regulations.